



CITY OF BURBANK

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Mr. Tom McGinnis, Transportation Coordinator
California EMS Authority
1930 9th St.
Sacramento, CA 95811

Re: Comments to EMSA Guideline # 141, Review Criteria and Policy for Transportation and Exclusive Operating Area Components of the EMS Plan, 8th Edition Draft

Dear Mr. McGinnis:

I am writing this letter on behalf of the City of Burbank Fire Department. The purpose of this letter is to provide some general comments to accompany those on the attached EMSA comment sheet.

First and foremost, we are aware that there is currently an ad hoc task force, comprised of members of the EMSA, Fire Chiefs, LEMSA's and other relevant participants whose focus is on addressing the tensions that currently exist regarding the ".201" statutes (Health and Safety Code § 1797.201), regulations, EOA's, private ambulance needs and local fire departments. They will not be coming back together until September 8. As such, the cutoff for comments on these proposed Transportation policies is premature and should be extended until after the task force makes their recommendations to the full EMSA.

Second, this agreement does not state clearly enough that for those cities and districts who have retained the administrative control of emergency medical services that they provided in June of 1980 pursuant to H & S Code § 1797.201, and who have historically provided transportation as part of that service, the LEMSA cannot require any form of competitive bidding process that would interrupt, interfere or in any manner intrude on the rights of those cities/fire districts to continue to provide that service at *whatever level* they so desire. Our comments on the attached comment sheet are intended to further clarify the law, which we believe is poorly or erroneously stated.

For many years, there has been a constant undercurrent of tension between the EMSA, LEMSA's, local fire agencies and private ambulance services. Many local fire agencies who have what is commonly referred to as "Section .201 rights" perceive an unwavering attempt by the LEMSA's to both undermine and erode their statutory local control over pre-hospital emergency medical services. The true nature and character of these

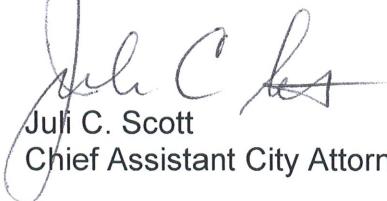
"Section .201" rights has been misconstrued and misrepresented. As the California Supreme Court has confirmed, Health and Safety Code § 1797.201 was intended to allow cities and fire districts to continue to exercise, in other words *retain*, the administrative control of emergency medical services that they provided in June of 1980 until such time as those agencies chose to contract with the LEMSA. While the Court recognized a legislative "expectation" in 1981 that the cities and counties would eventually come to an agreement, the Court declined to infer referentially any deadline. In fact the Court recognized the explicit absence of a statutory deadline. ("What happens if cities ... do not request written agreements with the county? ...Until cities and fire districts reach agreements with counties, they are to retain administration of their prehospital EMS." *County of San Bernardino v. City of San Bernardino* (1997) 15 Cal.4th 909, 923. The Court could not have made it more clear: "...[e]ligible cities and fire districts may retain administrative control of their emergency medical services until they agree otherwise with the counties in which they are located. *County of San Bernardino*, at p. 914

The adoption of H & S Code § 1797.224 did not change that. "A local EMS agency which elects to create one or more exclusive operating areas in the development of a local plan shall develop and submit for approval to the authority, as part of the local EMS plan its competitive process for selecting providers and determining the scope of their operations.... Nothing in this section supersedes section 1797.201." *County of San Bernardino*, at p. 918.

While we are aware that many LEMSA's would prefer not to have to recognize these cities' and fire districts' § 1797.201 rights, the practical reality is that many still exist even now, thirty years after the passage of this legislation. Rather than try to dance around the issue, it should be stated in a clear and straight forward manner in this and other documents of this type. The Burbank Fire Department would respectfully submit that the proposed language in this Transportation plan be unequivocal on this issue. As currently drafted, it is still confusing and sends a mixed message to all those cities and districts with §1797.201 status.

In addition to the comments contained here, The Burbank Fire Department endorses and adopts those submitted on behalf of the Culver City Fire Department.

Sincerely,



Juli C. Scott
Chief Assistant City Attorney

C: Burbank City Manager, Mike Flad
Burbank Fire Chief Ray Krakowski

Comments on Proposed Changes to EMSA Guideline 141;
 REVIEW CRITERIA AND POLICY FOR TRANSPORTATION AND
 EXCLUSIVE OPERATING AREA COMPONENTS OF THE EMS PLAN
 45-day Public Comment Period

December 7, 2009 – January 20, 2010

SECTION # Line # PAGE #	AGENCY	COMMENT* <i>* Please Note: Comments and suggested language changes are in bold and italics</i>	EMSA RESPONSE
I. Introduction D, p. 2: 26 - 29	Burbank Fire Department	"A LEMSA should ensure that it maintains contracts or operating agreements with all emergency transport providers, including ... any public safety agency with the exception of any agencies who retain administrative control of their emergency medical services, including provision of transportation services pursuant to the provisions of H & S Code § 1797.201. "	
II. Definitions p. 5:1 - 6	Burbank Fire Department	"Exclusive without a Competitive Process" defined. <i>This definition is very confusing and should be simplified. Suggested language: "This refers to an operating area under the jurisdiction of a city or fire district that has retained administrative control of their emergency medical services pursuant to the provisions of H & S Code § 1797.201."</i>	
II. Definitions p. 5:28-29	Burbank Fire Department	<i>Definition of "Non-exclusive operating area" is confusing and misleading. Any jurisdiction of a city or fire district that has retained administrative control of their emergency medical services pursuant to Health and Safety Code § 1797.201 would not fall within the stated definition, since they may in fact not be open to any other providers, nor would they required to be.</i> <i>Suggested definition would be "The EMS area or sub-areas that do not have restricted operations, and either are open to all qualified providers approved by a LEMSA or fall within the jurisdiction of a city or fire district has retained administrative control of their emergency medical services pursuant to the provisions of H & S Code § 1797.201."</i>	

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III. Transportation Plan Processing p. 9:3 - 6	Burbank Fire Department	"Create an exclusive operating area without completing a competitive process in any area under the jurisdiction of a city or fire district that has retained administrative control of their emergency medical services pursuant to the provisions of H & S Code § 1797.201."	
IV. Operating Areas p.11:10 – 15	Burbank Fire Department	<p><i>Current language provides for a LEMSA to establish an EOA if "(a) a LEMSA utilizes a competitive process to select the providers, OR a LEMSA chooses to continue the use of existing providers operating ..."</i></p> <p><i>Any agency that has retained administrative control pursuant to § 1797.201 does so by statute, and is not dependent upon the LEMSA "Choosing" to allow it to operate exclusively within its own jurisdiction as long as it provides all the requisite services. The use of the term "chooses" is prevalent throughout this document and is misleading and incorrect. We do not object to language that requires an agency with §1797.201 status to comply with applicable LEMSA standards for transportation, and would suggest that be separately (and more clearly) stated either in the Introductory and definition sections.</i></p>	
IV. Operating Areas; C. Exclusivity without a Competitive Process p. 13:1 – 7	Burbank Fire Department	Add at end of sentence: <i>Nothing herein is intended to establish an open competitive process or supersede or interfere with any existing rights in any jurisdiction where a city or fire district has retained administrative control of their emergency medical services pursuant to the provisions of H & S Code § 1797.201.</i>	

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IV. Operating Areas; C. Exclusivity without a Competitive Process p. 15:10 - 15	Burbank Fire Department	<p><i>This paragraph missates the law.</i> <i>The law states: : “...Ineligible cities and fire districts may retain administrative control of their emergency medical services until they agree otherwise with the counties in which they are located. (referring to H & S. Code §1797.201) County of San Bernardino, (1997) 15 Cal.4th 909, at p. 914</i></p> <p><i>Further, the Health and Safety Code § 1797.224 specifically states that it does not “supersede” §1797.201. Read together, the § 1797.201 rights absolutely guarantee exclusivity to any jurisdiction that has it and falls within the definition of § 1797.201 (retained administrative control of ems). That does not mean that it cannot be subjected to the LEMSA’s standards of performance, protocols, etc., however, the LEMSA cannot require a competitive process where an area is otherwise occupied by a local city or fire district with § 1797.201 status.</i></p>	